

STATE OF ILLINOIS  
DEPARTMENT OF HUMAN RIGHTS

IN THE MATTER OF THE  
REQUEST FOR REVIEW BY:

M.C.<sup>1</sup>

)  
)  
)  
)  
)  
)  
)

CHARGE NO: 2008CA0658  
EEOC NO: 21BA72661

ORDER

This matter coming before the Chief Legal Counsel upon Complainant's Request for Review ("Request") of the dismissal by the Department of Human Rights ("Department") of Count F of Charge No. 2008CA0658, M.C., Complainant, and State of Illinois, Department of Children and Family Services, Respondent; and the Chief Legal Counsel having reviewed de novo the Department's investigation file, including the Investigation Report, Complainant's Request and supporting materials, Respondent's Reply to Complainant's Request ("Reply"), and Complainant's Surreply to Respondent's Reply ("Surreply"); and the Chief Legal Counsel being fully advised of the premises;

NOW, THEREFORE, it is hereby ORDERED that the dismissal of Count F of Complainant's charge is SUSTAINED on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Chief Legal Counsel states the following findings of fact and reasons:

1. Complainant filed a charge of discrimination with the Department on July 1, 2007, perfected September 18, 2007,<sup>2</sup> alleging that Respondent subjected her to harassment based on

---

<sup>1</sup> Complainant's name has been replaced by initials consistent with public policy favoring confidentiality where an individual's disability is at issue.

<sup>2</sup> On September 14, 1998, Complainant filed an unperfected charge against Respondent with the Department in that she completed a Complainant Information Sheet ("CIS"). The Department did not allow Complainant to perfect that

her physical disability, (Count A), issued her a verbal reprimand based on her physical disability (Count B), issued her written reprimands based on her physical disability (Count C), issued her verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department (Count D), subjected her to unequal terms and conditions of employment based on her physical disability (Count E), failed to accommodate her physical disability (Count F), subjected her to harassment in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge against Respondent with the Department (Count G), and based on her age, 54 (Count H), suspended her based on her physical disability (Count I), and her age (Count J), and in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department (Count K), issued her unacceptable/negative performance evaluations based on her physical disability (Counts L and M), and in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department (Count N), subjected her to harassment based on her perceived physical disability (Count O), issued her a verbal reprimand based on her perceived physical disability (Count P), issued her written reprimands based on her perceived physical disability (Count Q), suspended her based on her perceived physical disability (Count R), subjected her to unequal terms and conditions of employment based on her perceived physical disability (Count S), failed to accommodate her perceived physical disability (Count T), and issued her unacceptable/negative performance evaluations based on her perceived physical disability (Counts U and V), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”).

2. On August 20, 2008, the Department dismissed Counts A to C, E, F, I, L and M of Complainant’s charge for Lack of Jurisdiction and Counts D, G, H, J, K, and N to V of Complainant’s charge for Lack of Substantial Evidence. On September 22, 2008, Complainant requested an extension of time to file a Request for Review. On September 23, 2008, the Chief Legal Counsel determined that Complainant established good cause for the request, and, therefore, granted Complainant a fourteen day extension of time to file her Request for Review, until October 8, 2008. 56 Ill. Admin. Code, Chapter II, § 2520.580(b). On October 8, 2008, Complainant filed a timely Request for Review. On November 9, 2009, the Chief Legal Counsel vacated the dismissal of Counts A to F, I, and L to V of Complainant’s charge and remanded those counts to the Department’s Charge Processing Division for further investigation and sustained the dismissal of Counts G, H, J and K of Complainant’s charge. On January 8, 2010, the Department dismissed Complainant’s charge for Lack of Substantial Evidence.<sup>3</sup> On January 15, 2010, Complainant requested an extension of time to file a Request for Review. On January

---

charge. On May 24, 2001, Complainant filed a mandamus action in the Circuit Court of Cook County, asking that the claims under the Act be adjudicated. On September 19, 2007, Complainant and the Director of the Department entered into a settlement agreement (“September 2007, Settlement Agreement”) whereby the Department agreed to process Complainant’s claims.

<sup>3</sup> In its Addendum to the Investigation Report, dated December 31, 2009 (“Addendum”), the Department inadvertently indicated on Page two that it was again recommending that Counts G, H, J and K of the instant charge be dismissed for Lack of Substantial Evidence. The body of the Addendum, however, is silent as to Counts G, H, J and K, which is proper, where, as previously stated, the Chief Legal Counsel sustained the dismissal of those counts in his Order dated November 9, 2009.

19, 2010, the Chief Legal Counsel determined that Complainant established good cause for the request, and, therefore, granted Complainant a fourteen day extension of time to file her Request for Review, until March 2, 2010. 56 Ill. Admin. Code, Chapter II, § 2520.580(b). On March 2, 2010, Complainant filed a timely Request for Review.

3. On August 29, 2011, the Chief Legal Counsel Designee vacated the dismissal of Counts B to D, D8 to D11, E, F, and L to N of Complainant's charge and remanded those counts to the Department's Charge Processing Division for further investigation and sustained the dismissal of Counts A, D1 to D7, I, and O to V of Complainant's charge. On December 9, 2011, the Department dismissed Complainant's charge for Lack of Substantial Evidence. On January 13, 2012, Complainant requested an extension of time to file a Request for Review. On January 19, 2012, the Chief Legal Counsel determined that Complainant established good cause for the request, and, therefore, granted Complainant a fourteen day extension of time to file her Request for Review, until January 30, 2012. 56 Ill. Admin. Code, Chapter II, § 2520.580(b). On January 30, 2012, Complainant filed a timely Request for Review. On July 12, 2013, the Chief Legal Counsel Designee vacated the dismissal of Count F of Complainant's charge and remanded that count to the Department's Charge Processing Division for further investigation and sustained the dismissal of Counts B1 to B11, C1 to C12, D8 to D11, E1 to E16, F1, and L to N of Complainant's charge. Therefore, Counts A to E16 and F1 to V were sustained in previous Request for Review Orders and are not before the Chief Legal Counsel in this Request. On September 25, 2013, the Department dismissed Count F of Complainant's charge for Lack of Substantial Evidence. On October 30, 2013, Complainant filed this timely Request as to Count F.

4. As to Count F, Complainant, a Public Service Administrator ("PSA"), Agency Performance Team ("APT") Supervisor, alleges that on or about August 7, 1998, Respondent failed to accommodate her physical disability in that Respondent denied her a hearing aid-compatible telephone with an amplified receiver.

5. As to Count F, Respondent denies that Complainant is a person with a disability within the meaning of Section 1-103(I) of the Act. Further, Respondent contends that in February 1999, Respondent provided Complainant with a reasonable accommodation in accordance with its reasonable accommodation policy.

6. As to Count F, the Department's investigation did not reveal that Complainant established a prima facie case that Respondents failed to accommodate Complainant's physical disability. As an initial matter, the parties dispute in this Request whether the Department has jurisdiction over Count F of Complainant's charge. Respondent contends that this allegation was not timely filed with the Department because it was not included in Complainant's CIS form submitted to the Department in 1998 or in the charges Complainant filed with the EEOC in March and June 1999. Complainant does not dispute that Complainant did not include the failure to accommodate allegation in her CIS submitted to the Department in September 1998 or in the EEOC charges. Rather, Complainant contends that the matter of jurisdiction was decided by the first Chief Legal Counsel Order which vacated the Department's dismissal for Lack of Jurisdiction. However, the basis for the Department's initial dismissal for Lack of Jurisdiction was that Complainant was not a person with a disability within the meaning of the Act, not that

the allegation was untimely. Thus, there is nothing in the record which shows that the Department ever made a finding as to whether this allegation was timely filed by Complainant. The record shows that the Department agreed to the September 2007, settlement agreement, wherein the Department agreed to process and investigate Complainant's charge of discrimination attached to the settlement agreement, which included Complainant's failure to accommodate allegation. However, the fact that the Department agreed to process and investigate the attached charge did not mean that the Department found that these allegations were timely filed with the Department. In fact, the settlement agreement specifically stated that the Department "does not guarantee the outcome of the investigation of Plaintiff's allegations, nor does this Agreement compel . . . the Department of Human Rights to make a particular finding or govern a determination in anyway." Thus, after reviewing the evidence in the Department's investigation file, and the evidence submitted by the parties during the Request for Review proceedings, there is no evidence that Complainant timely filed her reasonable accommodation allegation with the Department, and as such, the Department lacks jurisdiction over this allegation<sup>4</sup>. Therefore, the Department properly dismissed this count. Notwithstanding the untimeliness of this allegation, even if the Department does have jurisdiction over this allegation, for reasons explained below, the Department properly dismissed Complainant's charge for Lack of Substantial Evidence.

7. As to Count F, the Department's investigation revealed that Respondent is a state agency that investigates the abuse and neglect of minors and provides services to families to prevent abuse and neglect. Respondent has a Reasonable Accommodation Policy and Procedure ("RAPP") which states that Respondent "will make reasonable accommodations to the known physical . . . limitations of a qualified individual with a disability who is an employee . . . , unless the accommodation would impose an undue hardship on the operation of . . . [Respondent]. Such individual is responsible for initiating the request for reasonable accommodation, if that individual believes such accommodation is required to enable . . . her to perform the essential functions of the job." The Department's investigation revealed that Respondent's RAPP further provides, in part, that it is the policy of Respondent "to provide reasonable accommodations in the least costly and most effective manner available," and defines "[r]easonable accommodations" as "making modification or adjustments to . . . the work environment to enable qualified . . . employees with a disability . . . to perform the essential functions of a position, and to enjoy equal benefits and privileges of employment." Respondent's RAPP also provides that "[t]he determination of which accommodation is appropriate in a particular situation will be made on a case-by-case basis and involve the employer and employee in a flexible, interactive process whereby the employee identifies the precise limitations imposed by the disability and along with the employer explores potential accommodations that would overcome those limitations." In addition, Respondent's RAPP provides that "[t]he employer [sic] must request any and all reasonable accommodations on an Employee Request for Reasonable Accommodation form."

---

<sup>4</sup> Section 7A-102(A) of the Act states that a charge must be filed within 180 days after the date that a civil rights violation allegedly has been committed. Section 7A-102(A) of the Act is a jurisdictional requirement and failure to file a charge within the prescribed time period deprives the Department of jurisdiction to investigate the charge. Trembczynski v. Human Rights Commission, 252 Ill.App.3d 966, 625 N.E.2d 215, 218 (1<sup>st</sup> Dist. 1993).

8. Further, as to Count F, Respondent's RAPP states that the employee will transmit the completed form to the immediate Supervisor, who will immediately send a copy of that form to the Regional Administrator/Division Manager and the ADA Coordinator. Respondent's RAPP states that "[t]he determination of reasonable accommodation for a qualified employee who requires such to overcome a physical . . . impairment in performance of job duties must be made jointly by the employee and employer" and indicates that there are four levels at which Respondent may make a decision as to an accommodation request. The Department's investigation revealed that Respondent's Employee Handbook dated March 1997, Chapter 4, Section 4.4 states, in pertinent part, that "[re]asonable accommodations must be requested in writing through [Respondent's] ADA Coordinator . . . , using an ADA Request for Reasonable Accommodation . . . for approval."

9. Also, as to Count F, the Department's investigation revealed that Respondent hired Complainant in 1968. In 1998, Complainant was employed as a PSA APT Supervisor for Respondent's Cook County south region. Complainant job duties included supervising a team of 12 workers who monitored the performance of outside child welfare agencies under contract with Respondent to provide social services to the children and families Respondent served. In May 1998, Complainant's supervisor, Jayne Doyle ("Doyle"), Associate Deputy Director, sent Complainant a memorandum urging Complainant to get her hearing checked because her hearing loss was negatively impacting Complainant's ability to comprehend what was being said to her. On or about July 1, 1998, Carolyn Bailey ("Bailey"), PSA – FSM, became Complainant's immediate supervisor. On or about August 6, 1998, Bailey and Doyle met with Complainant to discuss concerns they had with Complainant's job performance. During this meeting, Complainant requested a hearing aid-compatible telephone with an amplified receiver. Bailey's notes indicate that Bailey informed Complainant that the issue of Complainant's telephone would be addressed on that same date.

10. In addition, as to Count F, the Department's investigation revealed that on August 27, 1998, Complainant sent Doyle a memorandum updating Doyle on her hearing condition. In her memorandum, Complainant did not state that she had not received a hearing aid-compatible telephone or that she needed one as an accommodation for her disability. On August 31, 1998, Doyle sent Complainant a memorandum summarizing her meeting with Complainant and Bailey. The memorandum stated that Steven Minter (Minter"), FSM, would be replacing Bailey as Complainant's immediate supervisor, effective September 2, 1998, and that Complainant must inform management of any reasonable accommodation she needs to perform her job duties. Complainant did not allege, nor did the Department's investigation reveal that Complainant ever responded to this memorandum informing Doyle that she still needed a hearing aid-compatible telephone as an accommodation for her disability. Rather, the Department's investigation revealed that it was not until January or February 1999 that Complainant again requested the telephone. On February 9, 1999, Complainant sent a reminder computerized note to Doyle, stating that Complainant had made her request for a hearing aid compatible telephone with an amplified receiver earlier verbally but her request was not processed. Doyle's computerized note to Complainant dated that same day indicates that Doyle made a request to Connie Price, Staff

Member, for an amplified telephone on January 11, 1999.<sup>5</sup> On February 22, 1999, Complainant notified Doyle that Complainant received the telephone on February 19, 1999, however, the telephone did not have the conference call feature that the other supervisor telephones had which Complainant indicated made it difficult for her to perform her job as APT Supervisor.

11. In order to establish a prima facie case for failure to accommodate, Complainant must show: (1) that she is a person with a disability within the meaning of the Act; (2) that she requested a reasonable accommodation; (3) that the accommodation was necessary for adequate job performance; and (4) that Respondent failed to grant the accommodation. See Illinois Department of Corrections v. Illinois Human Rights Commission, 298 Ill.App.3d 536, 541, 699 N.E.2d 143, 146 (3<sup>rd</sup> Dist. 1998). In the instant case, the Department's investigation did not reveal, nor did Complainant present, any evidence that Respondent failed to grant Complainant's request for an accommodation. The evidence shows that Complainant is a person with a disability and that she requested an accommodation for her disability in August 1998, in that she requested hearing aid-compatible telephone with an amplified receiver. Additionally, the evidence shows the accommodation was necessary for Complainant to adequately perform her job duties. However, the evidence also shows that Respondent provided Complainant with a hearing aid-compatible telephone with an amplified receiver in February 1999. Thus, the Department's investigation revealed that Complainant failed to establish the fourth prong of her prima facie case. Therefore, Complainant has failed to establish a prima facie case of discrimination and the Department properly dismissed Count F of Complainant's charge for Lack of Substantial Evidence.

12. Complainant contends that she satisfied the fourth prong of her prima facie case because Respondent's delay in granting her accommodation request was a constructive denial of her request and that the telephone she received was not adequate because it could not perform conference calls. An employer's delay in providing reasonable accommodation may constitute a denial of a request for accommodation if the delay was unreasonable or the result of a discriminatory intent. See Selenke v. Medical Imaging of Colorado, 248 F.3d 1249 (10<sup>th</sup> Cir. 2001) and Carlson v. Parry, No. 06-CV-6621P, 2012 WL 1067866, at \*13 (W.D.N.Y. March 29, 2012) ("A delay in implementing an accommodation does not violate the ADA, however, unless the delay was unreasonable or plaintiff has provided evidence of discriminatory intent."). In assessing whether a delay is unreasonable, courts consider factors such as the "length of the delay, the reasons for the delay, whether the employer has offered any alternative accommodations while evaluating a particular request, and whether the employer has acted in good faith." Selenke, 248 F.3d at 1262-63. In the instant case, the Department's investigation did not reveal that Respondent's delay in implementing Complainant's accommodation request was unreasonable under the circumstances or was the result of a discriminatory intent. While six months did pass between Complainant's verbal request for a hearing aid-compatible telephone in August 1998 and when Respondent provided Complainant with her requested phone in February 1999, the Department's investigation revealed that the delay was due to confusion with Respondent whether the request for a hearing aid-compatible telephone was resolved and due to miscommunication between Respondent and Complainant. The Department's investigation

---

<sup>5</sup> Doyle's February 9, 1999, note to Complainant, which is included in the Department's investigation file, states that Doyle ordered the telephone from Price on "1-11-98." Based on the context of that note, that date is a typographical error and should reflect that Doyle ordered the telephone on "1-11-99."

revealed that Complainant only made her request verbally and that she had several different supervisors during this time period. Further, the evidence shows that Doyle believed that the issue regarding Complainant's telephone would be resolved on or about August 7, 1998. While issue was not resolved, Complainant did not utilize Respondent's accommodation forms as set forth in Respondent's policy nor did she respond to Doyle's August 31, 1998, memorandum informing Doyle that she still needed the hearing aid-compatible telephone. In fact, the Department's investigation revealed that Complainant did not raise the issue of her telephone until January 1999. Once Complainant raised the issue again with Respondent, Respondent ordered Complainant's telephone and she received it the following month. Thus, there is no evidence that Respondent acted in bad faith in their delay in obtaining the telephone. As such, the Department's investigation did not reveal that Respondent's delay in providing Complainant with her telephone was unreasonable under these circumstances or was done with a discriminatory intent. Therefore, there is not substantial evidence that Respondent failed to accommodate Complainant's physical disability.

13. Similarly, there is no evidence that Respondent acted in bad faith when they provided her with a hearing aid-compatible telephone which was not able to make conference calls. The Department's investigation revealed that Complainant merely requested a telephone which was hearing aid-compatible. There is no evidence that Complainant also requested one which could make conference calls. Moreover, since Complainant made her request verbally, and did not utilize respondent's accommodation forms, Respondent merely had to rely upon Complainant's verbal request. The Department's investigation did not reveal, nor did Complainant present, any evidence that Respondent intentionally provided Complainant with a hearing-aid compatible telephone which could not make conference calls to inhibit Complainant's ability to perform her job duties. Rather, the evidence shows that that in August 1998, Respondent specifically informed Complainant that if there was any accommodation she needed to perform her job she should inform management. Moreover, the evidence shows that Respondent provided her with a hearing-aid compatible telephone after she requested one. Thus, the evidence shows that Respondent was trying to accommodate Complainant's disability in good faith. Therefore, there is not substantial evidence that Respondent failed to accommodate Complainant's physical disability.

14. In her Request, Complainant fails to provide any additional evidence that would warrant a reversal of the Department's original determination as to Count F. Complainant alleges in her Request that the Department placed her "[s]eeking of [r]eview by the Chief Legal Counsel at a [p]rocedural [d]isadvantage by [u]se of a fictitious [a]ffidavit of [s]ervice" Documentation in the Department's investigation file shows that on September 25, 2013, the Department issued a Notice of Dismissal, which incorrectly indicated that the Request for Review filing deadline date was December 30, 2013. Documentation in the Department's investigation file further shows that subsequently, the Department issued a corrected Notice of Dismissal, which properly indicated that the Request for Review filing deadline date was October 30, 2013. The Department's corresponding affidavit of service, however, erroneously failed to change the date of mailing. Notwithstanding the Department's error in failing to change the date of mailing, Complainant does not show how she was prejudiced by this scrivener's error where Complainant timely filed her Request on October 30, 2013, and did not request an extension of time to file her Request, a remedy to which she had availed herself in the past (see paragraphs 2 and 3 above).

To the extent that Complainant is alleging that the Department did not conduct a proper investigation and made improper findings, a review of the record shows that the Department followed its procedures, conducted a full investigation and made findings based on the evidence discovered. To her Request, Complainant attached Exhibits 1, 3, 4, 5, 6 and 7, which were submitted during the Department's investigation. The Department and the Chief Legal Counsel considered those documents and did not find that Respondent unlawfully discriminated against Complainant as to Count F. Complainant's Request is not persuasive as to Count F.

15. In its Reply, Respondent contends that the Department properly dismissed Count F of Complainant's charge.

16. In its Surreply, Complainant fails to provide any additional evidence that would warrant a reversal of the Department's original determination as to Count F.

17. In sum, as to Count F, Complainant failed to establish, and the Department's investigation failed to show, substantial evidence that Respondent failed to accommodate Complainant's physical disability.

18. This is a final Order as to Counts A through V and incorporates all previous orders. A final Order may be appealed to the Appellate Court by filing a petition for review, naming 1) the Chief Legal Counsel, 2) the Department, and 3) Respondent as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this Order. The Department deems "service" complete 5 days after mailing.

ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
Lon D. Meltesen  
Chief Legal Counsel